



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION I (NEW ENGLAND)
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ENFORCEMENT UPDATE - SEPTEMBER 2005
BEEDE WASTE OIL SUPERFUND SITE

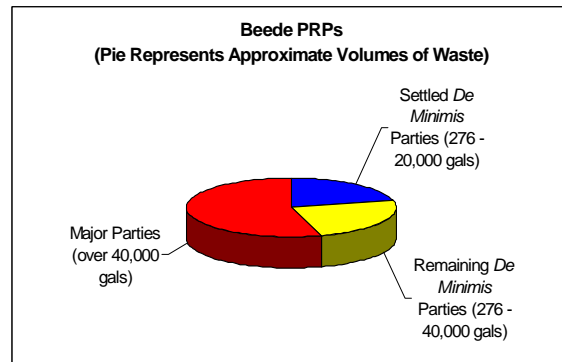
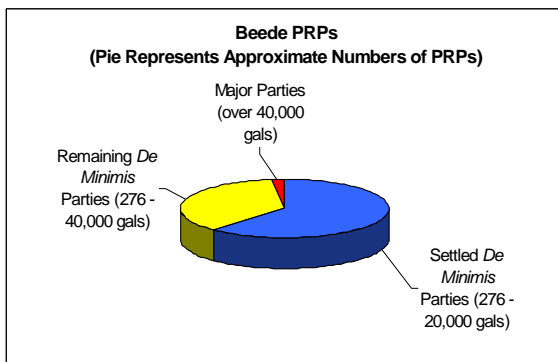
Progress on Site Cleanup

EPA issued the *Record of Decision* (“ROD”), which documents the selected cleanup remedy for the Beede Waste Oil Superfund Site (Site), in January 2004. Please refer to the ROD Fact Sheet, or to the ROD itself, for more information about the remedy. These and other site documents are available at: www.epa.gov/region01/superfund/sites/beede.

In August 1996, EPA initiated a Non-Time Critical Removal Action (NTCRA) to remove mobile contaminated oil that is floating on the groundwater. The NTCRA originally consisted of an interceptor trench that was constructed in 1998 and designed to passively capture oil seeping into Kelley Brook. In February 2000, EPA added a 143-well vacuum-enhanced extraction system to actively remove subsurface oil. Since February 2000, EPA has removed over 90,000 gallons of oil from the groundwater surface. In Fall 2005, EPA plans to discontinue operation of the extraction system, as the effectiveness and performance of this component of the NTCRA has significantly decreased over time. Although the extraction system will no longer operate, the NTCRA will continue with EPA maintenance of the interceptor trench, from which additional waste oil will be extracted. Additional information regarding the NTCRA is available in the Beede site file maintained in EPA’s records center and on the Beede website noted above.

Past De Minimis Settlements with Generators

EPA has completed **four** *de minimis* cashout settlements with smaller volume potentially responsible parties (“PRPs”) identified as “generators” under Superfund who contributed up to 20,000 gallons of hazardous waste to the Site. These settlements have raised approximately \$17.1 million dollars for the Site, currently held in the Beede Site Superfund Special Account. The *de minimis* settlements also raised about \$320,000 towards past costs for the New Hampshire Department of Environmental Services. In total, 1,199 parties have settled their liabilities for Beede, representing approximately **60%** of all the parties identified as generators, and representing about **23%** of the hazardous waste contributed to the Site by these parties, as illustrated in the pie charts included below. Many of the parties who took advantage of these early settlement opportunities are small and mid-sized businesses and municipalities.



EPA Enforcement Update for the Beede Waste Oil Superfund Site - September 2005

Upcoming Negotiations with EPA and the State of New Hampshire for Site Cleanup

EPA and the State of New Hampshire are preparing to initiate final negotiations for performance of the selected remedy, called remedial design/remedial action (“RD/RA”) or “global” settlement negotiations. Typically, this process involves issuance of a “Special Notice” letter by EPA soliciting a good faith offer for performance of the remedy set forth in the ROD, and culminates in a final settlement agreement for the Site, memorialized in a consent decree. Under the Superfund law, the issuance of Special Notice initiates a series of strict deadlines governing the RD/RA negotiation process. Recognizing the diverse group of parties that have not settled their liability at the Site, and in the interest of facilitating a comprehensive global settlement and expediting Site clean up, EPA will be waiving Special Notice procedures for RD/RA settlement negotiations in this instance, and conducting these negotiations under a specially designed time-line.

Grouping of the Remaining PRPs

EPA has divided the remaining parties that have not settled their liability at the Site, about 700 in number, into two distinct groups for this next stage of the Superfund settlement process. The major generator parties (those who contributed 40,000 gallons or above to the Site), along with the highest volume *de minimis* generator parties (those who contributed 20,001 to 39,999 gallons to the Site), as well as all owners, operators and transporters, will receive specific invitations to participate in RD/RA negotiations with EPA and the State of New Hampshire. This group of about 100 parties will be asked to submit a good faith settlement offer to EPA as explained further below.

The lower volume *de minimis* generator parties, those who contributed up to and including 20,000 gallons of hazardous waste to the Site, will receive an “informational” letter from EPA encouraging them to consider becoming a part of an eventual settlement with EPA and the State of New Hampshire, and providing the names of several representatives of the parties receiving EPA’s specific invitation to negotiate. These representatives may be contacted to receive information about future cashout settlement opportunities. Recipients of informational letters are not being asked to participate directly in negotiations with EPA and the State of New Hampshire for performance of the remedy. Note that these informational letters will not contain specific settlement offers, as any such offers are expected to result from the global RD/RA negotiations process, as explained further below.

Goal of RD/RA Negotiations

EPA expects that negotiations with the group of 100 parties identified above will result in a comprehensive global settlement under which the larger PRPs will fund and implement the long-term Site cleanup deemed necessary by EPA. EPA also expects that through this process further *de minimis* cashout settlements with smaller volume PRPs will be made. The smaller volume generator parties (those who contributed 20,000 gallons or less to Beede) are not *required* to contact representatives of the 100 parties identified above; however, EPA encourages them to notify representatives of the larger PRP group of their interest in future cashout settlement opportunities and to raise any issues they feel need to be addressed in order to achieve settlement.

EPA Enforcement Update for the Beede Waste Oil Superfund Site - September 2005

PRPs Encouraged to Organize into Representative Groups

EPA will request that the approximately 100 parties receiving invitations to participate in RD/RA negotiations organize themselves into representative group(s) and form a smaller, representative steering committee for future settlement negotiations. The remaining smaller volume *de minimis* parties receiving informational letters from EPA are encouraged to keep informed of future settlement opportunities by initiating and maintaining contact with member(s) of the steering committee. As noted above, individual letters explaining party status and the expected settlement process will be issued to all of the approximately 700 remaining parties at the beginning of October. Contact information for unsettled parties is currently posted on the Alphabetical Address List of Remaining Generators on the Beede website at <http://www.epa.gov/ne/superfund/sites/beede/lpl.htm>.

Ability to Pay

With each *de minimis* settlement offer issued in the past, EPA notified recipients that they could choose to submit an ability-to-pay (“ATP”) claim to EPA for consideration, in lieu of settlement at that time, if they believed that they would face undue financial hardship by paying the full settlement amount offered. EPA reviewed and responded to every ATP claim fully submitted in response to the first and second *de minimis* settlement offers, and the Beede third *de minimis* settlement is, in fact, a settlement with 12 *de minimis* generator parties who chose to submit the full documentation necessary to support an ATP claim pursuant to the Beede second *de minimis* settlement. In addition, EPA received a small number of ATP claims in response to the Beede fourth *de minimis* settlement, and EPA will issue letters to each of these parties in October, explaining the status of their claims.

Both the invitation letters for participation in RD/RA negotiations and the informational letters issued to remaining lower volume *de minimis* parties will include notification that recipients can choose to submit an ATP claim to EPA for consideration if they believe that they would face a severe financial hardship by participating in the funding or implementation of the selected remedy at Beede. If parties choose to pursue this option, they will be required to substantiate their claim of financial hardship by submitting detailed financial documentation for review by EPA.

PRP Waste Quantity Reviews

Along with issuance of general liability notices to PRPs in June 2001, EPA offered to review PRP waste quantity information upon written request. Since then, EPA has reviewed hundreds of requests for “waste quantity reviews,” and sent letters to over 200 parties. EPA focused its review on correcting “simple” mistakes – errors that were readily recognizable through visual review of the evidence. EPA has explained in prior communications that it was necessary to defer consideration of requests for review that involve more complex claims, including those requiring legal determinations, until a later time. As part of the global settlement process included in RD/RA negotiations, EPA will encourage the 100 parties receiving specific invitation letters to consider formulating a process for reviewing complex claims in the interest of global settlement.

Additional Information

To learn more about accessing public records concerning the Beede selected remedy, and the upcoming negotiations, as well as other information about the Site, please call the toll-free Beede Enforcement Hotline at 1-888-294-6980 or visit the Beede website at www.epa.gov/region01/superfund/sites/beede.